

STATE OF ILLINOIS

POLLUTION CONTROL BOARD

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Irvin G. Goodman

DATE: June 17, 1975

Mr. P. Scott Curtin  
Reid, Oschenschlager et al  
75 S. Stulp Avenue  
Aurora, Illinois 60507

Mr. Paul D. Fischer  
Crane & Kravets  
100 W. Monroe Street  
Chicago, Illinois 60603

PCB74-390

ENVIRONMENTAL PROTECTION AGENCY

v.

E. B. R. TRUCKING, INC.

ILL. E.P.A.-D.P.C.  
STATE OF ILLINOIS  
JUL 14 1975  
RECEIVED

Enclosed please find a certified copy of the OPINION AND ORDER  
of the Board adopted on June 13, 1975 in the above entitled matter.

Very truly yours,

*Christen L. Moffett*  
Christen L. Moffett  
Clerk of the Board

cc: Mr. Jeffrey R. Diver, Illinois Environmental Protection Agency (6)  
Attorney General William Scott, Environmental Control Divisions

EPA Region 5 Records Ctr.



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ILLINOIS POLLUTION CONTROL BOARD  
June 13, 1975

ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB 74-390
	)	
D & N TRUCKING, INC., an Illinois	)	
corporation and HERB PHILLIPS,	)	
individually,	)	
	)	
Respondents.	)	

Jeffrey Herden, Assistant Attorney General for the EPA  
Scott Courtin, Attorney for Respondents

OPINION AND ORDER OF THE BOARD (by Mr. Henss):

The Environmental Protection Agency filed its Complaint on October 25, 1974 charging that Herb Phillips, as owner of a solid waste management site in Kane County, Illinois and D & N Trucking, Inc. as operator of the solid waste management site, had violated Rule 202(b)(1) of the Solid Waste Regulations and Section 21(b) of the Environmental Protection Act. The violations are alleged to have occurred from July 27, 1974 to the date of filing of the Complaint.

A Stipulation of Facts submitted by the parties shows that legal title to the solid waste management site is held by Rose K. Phillips. David H. Thom, d/b/a D & N Trucking, Inc., leases the site from Rose Phillips to operate a solid waste management site.

In January 1974 Thom was informed by a representative of Rose Phillips that a permit application for operation of the site would be completed and submitted by April 1974. On six occasions between January 1974 and October 25, 1975 Thom checked with the representative and was assured that the representative was in the process of applying for a permit.

Thom began waste disposal operations at the site on September 19, 1974. He first learned that no permit had been applied for when he received the Agency's Complaint. He immediately hired a consulting engineer to survey the site and

determine whether or not a permit could be obtained. David Beck, an employee of the engineering firm, completed an application for permit to develop and operate the site on January 16, 1975. Beck, formerly employed by the Agency, informed Thom that he and a member of the Agency's Land Pollution Control Permit Division had discussed the preliminary data and that the Agency representative indicated that there would be no problems in granting the permit. The permit was issued in March 1975.

At the outset of the public hearing, the Agency moved to dismiss Respondent Herb Phillips because he had been improperly joined as a party in this matter. The Agency motion for dismissal of Herb Phillips as Respondent is allowed.

No Agency witnesses testified during the public hearing. Instead, the Agency bases its entire case on information contained in the Stipulation of Facts (R. 6). Subsequent to the hearing, the Agency filed its Motion to Amend Complaint in order to have the pleadings conform with evidence and testimony presented at the public hearing. The Amended Complaint, in addition to the previously alleged violations, includes an alleged violation of Section 21(e) of the Act. The Motion to Amend Complaint is hereby allowed.

David Thom, President of D & N Trucking, Inc., admitted that Respondent operated the waste management site without a proper permit (R. 9). Thom testified that he was aware of the permit requirement in January 1974 (R. 12). He relied on the owner's agent to get a permit. Thom began operating the waste management site on September 19, 1974 without first checking to see if a permit had in fact, been obtained. Respondent failed to act on this obligation until the Agency filed its Complaint. Thereafter, Respondent acted with reasonable speed to comply with the permit requirements.

Expenditures by Thom for engineering services to secure the permit have been about \$1,000 through December 1974. He indicated that this figure could increase since he had not yet received a bill for engineering services rendered through January 1975 (R. 11).

From the Stipulation of Facts and testimony by Thom we find that violations of Section 21(e) of the Act and Rule 202(b) of the Solid Waste Regulations did occur from September 19, 1974 to October 25, 1974. Respondent D & N Trucking, Inc. did operate the site without a permit. However, there is no testimony or evidence showing that Respondent engaged in the practice of open dumping as charged [Section 21(b) of the Act]. The fact that Respondent received a development permit on March 18, 1975

indicates that open dumping is not a problem at this site. The Board cannot find a violation of Section 21(b) of the Act in the total absence of any proof bearing on the practice of open dumping.

Also missing in this matter is any evidence in aggravation whatsoever. There is no evidence or testimony which can be construed as showing that any person was injured or that Respondent's operation interfered with the protection of health, general welfare or physical property of the people of Illinois. The social and economic value of the operation is not discussed nor is the suitability or unsuitability of the site location. Evidence and testimony does establish that it was technically practicable and economically feasible for Respondent to comply with the Statute and Regulations.

In mitigation, it is stipulated that Respondent was told on six occasions that a representative of the lessor would apply for the required permit. While this fact does not totally relieve Respondent of his responsibility, it does provide a showing of Respondent's intentions in this matter.

On the record presented the Board believes that Respondent's actions tend to show that the admitted violations are attributable to negligence and not bad faith. Having considered all aspects of the case, the Board finds that a penalty in the amount of \$500 is appropriate.

In imposing this penalty, the Board reaffirms the position that the permit process is a necessary and important element in the Solid Waste Regulations. Failure to apply for a permit deprives the State of that information needed to protect the health, general welfare and physical property of the people; determine the social and economic value of the operation and the suitability of its location. On balance, the Board believes that the penalty imposed is required and will serve to deter future violations of the type found in this proceeding.

This Opinion constitutes the findings of fact and conclusions of law of the Pollution Control Board.

#### ORDER

It is the Order of the Pollution Control Board that:

1. Respondent D & N Trucking, Inc., shall pay to the State of Illinois by June 27, 1975 the sum of \$500 as a penalty for its violations of Rule 202(b) Solid Waste Regulations, and Section 21(e), Environmental Protection Act found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois

shall be made to: Fiscal Services Division, Illinois  
EPA, 2200 Churchill Road, Springfield, Illinois 62706.

2. The allegation that Respondent violated Section  
21(b) of the Environmental Protection Act is dismissed.

3. Herb Phillips is dismissed as Respondent in  
this case.

I, Christian L. Moffett, Clerk of the Illinois Pollution Control  
Board, hereby certify the above Opinion and Order were adopted  
on the 13<sup>th</sup> day of June, 1975 by a vote of 5-0.

Christian L. Moffett  
Christian L. Moffett, Clerk  
Illinois Pollution Control Board